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FEDERAL ELECTION
COMMISSION

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
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MUR 6282)
FRIENDS OF JOHN LEE SMITH)
AND RANDY SCHULZ, AS TREASURER)
JOHN LEE SMITH FOR U.S. CONGRESS)
COMMITTEE TO ELECT JOHN LEE SMITH 2010)
JOHN LEE SMITH)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6282 as a low-rated matter.

In this matter, the complainant, Steven L. Reeves, alleges that candidate John Lee Smith,¹ his campaign committee, Friends of John Lee Smith and Randy Schulz, in his official capacity as treasurer (the Committed), and Mr. Smith's other purported campaign committees violated several provisions of the Federal Election Campaign Act of 1971, as amended (the Act) and its underlying regulations.² First, according to the complaint and attachments, none

¹ Mr. Smith, who sought to represent Indiana's Eighth Congressional District, was an unsuccessful candidate in that state's May 4, 2010 primary election.

² The alleged committees include the following: "John Lee Smith for U.S. Congress," referenced in copies of what appear to be Mr. Smith's Facebook pages (Attachment 1, entitled "Why I am running for U.S. House of Representatives," posted on February 24, 2010 and Attachment 2, announcing the launching of the campaign's website, posted on March 2, 2010); the "Committee to Elect John Lee Smith 2010," allegedly described in the disclaimer for the campaign's website (Attachments 3 and 4) as having "paid for" the website; and the Committee; referred to in the disclaimer for the Smith campaign's television advertisement (Attachment 7, discussed *infra*).

1 of the three committees apparently connected with the Smith campaign have filed Form 1
2 Statements of Organization, which are required by 2 U.S.C. § 433(a) to be filed within 10
3 days after a candidate designates his or her authorized campaign committee(s).

4 Second, the complainant claims that Mr. Smith has, thus far, failed to file a Form 2
5 Statement of Candidacy, although section 432(e) of the Act required that he do so within 15
6 days of attaining candidate status by expending over \$5,000 in connection with his
7 announced congressional campaign, *see* 2 U.S.C. § 431(2)(A). In support, the complainant
8 includes as Attachment 5 what he purports to be Mr. Smith's March 19, 2010 announcement
9 on Facebook of his campaign's first television advertisement, in addition to what are
10 described in Attachment 6 as "station orders" dated March 17, 2010, allegedly obtained from
11 local television stations, which appear to disclose costs of approximately \$10,695.00 for the
12 Smith media campaign. Finally, in Attachment 7, the complainant includes what he
13 describes as the "text of the advertisement," which he alleges lacks written and oral statements
14 of approval by the candidate, as required by 2 U.S.C. § 441d(d)(1) for television or radio
15 advertisements. As transcribed in Attachment 7, the commercial includes Mr. Smith's oral
16 statement "I'm John Lee Smith," and the written and oral statement "Paid for and approved by
17 Friends of John Lee Smith."

18 In response, Mr. Smith, who apparently replied on behalf of himself and his
19 Committee, states that he and his Committee timely filed a Form 2 Statement of Candidacy,
20 and a Form 1 Statement of Organization, respectively, albeit on "state forms," and that they
21 subsequently filed the requisite reports on the correct FEC forms. As for the allegedly
22 defective disclaimer, Mr. Smith does not take issue with the data provided by the
23 complainant, but asserts that his media buyer and producer followed "the letter of the law" and

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1 that the television stations, which ran his advertisement said that it "was correct." The
2 candidate further notes that he was the only individual to appear in the advertisement. In
3 conclusion, Mr. Smith offers that, although he was defeated in the primary election, he and
4 his volunteers made every effort to comply with FEC guidelines.³

5 The Committee's 2010 April Quarterly Report discloses that Mr. Smith, who had
6 apparently announced that he was running for Congress on February 24, 2010 (Attachment
7 1), had expended \$12,000 of his own funds in connection with his candidacy one day earlier.
8 Arguably, therefore, Mr. Smith, who apparently attained candidate status no later than
9 February 24, 2010, pursuant to 2 U.S.C. § 431(2)(A), should have filed his Form 2 Statement
10 of Candidacy no later than 15 days after February 24th, or by March 11, 2010, and the
11 Committee should have filed its Form 1 Statement of Organization no more than 10 days
12 thereafter, or by March 21, 2010, and its 2010 April Quarterly Report by April 15, 2010.

13 The Federal Election Commission website discloses that Mr. Smith's Statement of
14 Candidacy (filed on FEC Form 2), and the Committee's Statement of Organization (filed on
15 FEC Form 1) and its April Quarterly Report, filed on April 21, 2010, all appear to have been
16 submitted untimely. See 2 U.S.C. §§ 432(e), 433(a) and 434(a). With respect to the Smith
17 campaign's television advertisement and website, appropriate disclaimers were required,
18 including oral and written statements by the candidate approving the message, as set forth in
19 2 U.S.C. § 441d(d)(1), and a disclaimer that accurately described the name of the committee
20 paying for the website, pursuant to 11 C.F.R. § 110.11(a)(1). Thus, with respect to the
21 Committee's alleged disclosure violations, it has subsequently made its required filings on the

³ Although the candidate's response does not allude to his campaign website, an Internet search reveals that the website, <http://www.johnleesmith2010.com/> (last visited on July 2, 2010), bears the disclaimer "Paid for by Friends of John Lee Smith," his registered campaign committee.

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1 correct forms and, as to the Smith campaign's television advertisement, the public was
2 unlikely to have been misled. As for the website, it appears that the deficiencies have been
3 corrected, *see n. 3*.

4 Accordingly, in furtherance of the Commission's priorities and resources, relative to
5 other matters pending on the Enforcement docket, the Office of General Counsel believes
6 that the Commission should exercise its prosecutorial discretion and dismiss this matter.
7 *See Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, this Office intends on reminding
8 John Lee Smith and Friends of John Lee Smith and Randy Schulz, in his official capacity as
9 treasurer, of the requirements under 2 U.S.C. §§ 432(e), 433(a) and 434(a) concerning the
10 submission of required filings with the Federal Election Commission, as well as the
11 requirements under 2 U.S.C. § 441d(d)(1) and 11 C.F.R. § 110.11(a)(1) concerning the use of
12 appropriate disclaimers on their television advertisement and website.

13 **RECOMMENDATIONS**

14 The Office of General Counsel recommends that the Commission dismiss MUR
15 6282, close the file, and approve the appropriate letters. Additionally, this Office
16 recommends reminding John Lee Smith and Friends of John Lee Smith and Randy Schulz, in
17 his official capacity as treasurer, of the requirements under 2 U.S.C. §§ 432(e), 433(a) and
18 434(a) concerning the submission of required filings with the Federal Election Commission,
19 as well as the requirements under 2 U.S.C. § 441d(d)(1) and 11 C.F.R. § 110.11(a)(1)

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1 concerning the use of appropriate disclaimers on their campaign television advertisement and
2 website.

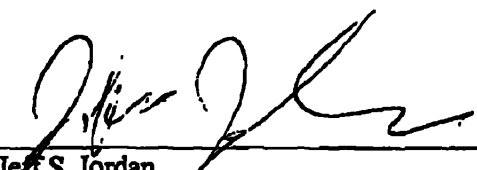
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